

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

OMAR WESLEY,
by next friend Brenda Wesley,

Plaintiff,

Case No. 2:19-cv-00918-BHL

v.

ARMOR CORRECTIONAL HEALTH SERVICES,
INC., MAUREEN WHITE, KIM WOLF, DEBORAH
MAYO, COURTNEY HOLIFIELD, KAYLA
MCCULLOUGH, MILWAUKEE COUNTY, NANCY
EVANS, KEVIN NYKLEWICZ, WISCONSIN
COMMUNITY SERVICES, INC., TEWANA
MARSHALL, JOHN COOK, MICHAEL EWING,
SUZANNE WILLIAMS, WISCONSIN COUNTY
MUTUAL INSURANCE CORPORATION,
EVANSTON INSURANCE COMPANY, BARTON &
ASSOCIATES, INC., THE MEDICAL PROTECTIVE
COMPANY, INC., INJURED PATIENTS AND
FAMILY COMPENSATION FUND, and WEST BEND
MUTUAL INSURANCE COMPANY,

Defendants.

**PLAINTIFF'S CIVIL L. R. 7(H) EXPEDITED NON-DISPOSITIVE MOTION TO
COMPEL ARMOR CORRECTIONAL HEALTH SERVICES, INC., TO PRODUCE
DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE
ITEMS RELATING TO ITS COMMUNICATIONS WITH PHARMACIES**

NOW COMES Plaintiff Omar Wesley ("Wesley"), by next friend Brenda Wesley, by their attorneys, the law firm of GINGRAS THOMSEN & WACHS LLP, by Attorneys Mark L. Thomsen and William F. Sulton, and the law firm of MASTANTUONO & COFFEE, S.C., by Craig A. Mastantuono, and moves the Court for an order compelling Defendant Armor Correctional Health Services, Inc.

(“Armor”) to produce all documents and communications with Armor’s contracted pharmacies providing medications to persons in the Milwaukee County Jail (“MC-J”) from 2014 to the present.

Wesley suffers from schizoaffective disorder. (Dkt. 98 (Am. Compl.) at ¶1.) On December 1, 2015, mental health providers at Mendota began a last-resort initiation of the powerful antipsychotic medication clozapine (or Clozaril). (*Id.*, at ¶¶19, 111.) Clozapine is a medication of last resort for people who have failed on other antipsychotic medications. (*Id.*, at ¶111.) Clozapine is prescribed to be taken twice daily, with the majority of the medication given at bedtime. (*Id.*, at ¶115.) Wesley’s daily therapeutic dosage was 25mg in the morning and 275mg at bedtime. (*Id.*) By December 14, 2015, Mendota’s staff reported demonstrable improvements in Wesley’s ability to communicate and provide feedback. (*Id.*, at ¶4.) By February 3, 2016, Lesley Baird, Psy.D. (“Dr. Baird”) conducted a competency evaluation of Wesley. On February 4, Dr. Baird advised the Milwaukee Circuit Court Judge William Pocan (“Judge Pocan”) that Wesley “has been responsive to psychotropic medication, specifically Clozaril, which has resulted in greater stability and improved clarity” and recommending that “the Court consider orders for the continued administration of the medication in order to maintain Wesley’s stability and safety.” On February 17, 2016, Judge Pocan signed an order requiring that Wesley be produced in court to address his pending case and on June 28, 2016 ordered Wesley’s release to the community under the supervision of the Department of Health Services and Wisconsin Community Services, Inc. (*Id.*, at ¶¶6, 66-79, 80-84, 166-67, 187.)

On February 23, 2016, Travis Compere (“Compere”), the registered nurse manager at Mendota, sent an email to Maureen White, Ph.D. (“Dr. White”), Armor’s Mental Health Director, explaining that “Omar is prescribed clozapine due to failure on other psychiatric medications” and that “a lapse in receiving medication would cause Omar to quickly decompensate.” (*Id.*, at ¶113.)

The email confirmed that Armor's employee "assured [Mendota] that Omar would not have a lapse in medication" and Dr. White provided her additional assurance that "I will follow up to make sure he gets what he needs." (*Id.*, at ¶114.) On the same day, February 23, Mark Phelps, M.D., sent an email to Dr. White advising that he "spoke with Deb Mayo [Armor's agent and psychiatric nurse practitioner] at the jail" and "Deb Mayo reported that the patient would be continued on the clozapine and that she was a registered clozapine provider." (*Id.*, at ¶118.) Wesley was transferred to MC-J on February 23, but contrary to Armor's promises to Mendota, Wesley was regularly deprived of his daily constitutionally required dosage of clozapine. (*Id.*, at ¶¶119, 122.) (Between February 23 and August 26, 2016, Wesley was deprived of his daily therapeutic dosage of clozapine on at least 64 occasions. (*See* Dkt. 144-13.))

On February 24, 2016, Mr. Wesley was transferred to the Milwaukee County House of Corrections ("MC-HOC"). (Dkt. 98 at ¶123.) Kim Wolf ("Wolf") was Armor's psychiatric nurse practitioner at MC-HOC. (*Id.*, at ¶¶32-35.) Because clozapine was not on Armor's formulary, Wolf submitted a Drug Exception Request form to Armor's Medical Director. (*Id.*, at ¶¶125.) Wolf's form noted, "Mendota patient – decompensates quickly if 1 dose is missed of meds per Mark Phelps MD at Mendota." (*Id.*) On February 25, 2016, Wolf sent a prescription for clozapine to Omnicare of Milwaukee (also known as Roeschen's Pharmacy), Armor's contracted pharmacy, for clozapine to start on February 26. (*Id.*, at ¶129.)

Wolf testified that "[m]edication, getting it from the pharmacy, would sometimes be a delay" and that "[t]hey were working on trying to get it better managed." (Dkt. 144-5 (Wolf Dep.) at 40:25-41:8.) Wolf testified that "I would say it would happen once or twice a week, that a certain antipsychotic wasn't available[.]" (*Id.*, at 41:6-14.) CarryAnne Adriano ("Adriano") was a registered nurse and Armor's night supervisor at the jail. (Dkt. 144-7 (Adriano Dep.) at 37:23-

35.) Again, most of Wesley’s daily therapeutic dosage of 300mg (i.e., 275mg) was prescribed at night. Adriano admitted that on a “daily” basis mental health patients at MC-J were deprived of psychotropic medications because it was “unavailable.” (*Id.*, at 50:21-51:18.) As warned by mental health providers at Mendota, Wesley decompensated and because of the deprivations of his required daily therapeutic dosage, Wesley has been at Mendota since August 26, 2016—unable to regain competency. (*See, e.g.*, Dkt. 144-6 (Mayo Dep.) at 112:1-14 (Mayo explaining that she made a note dated July 29, 2016, of Wesley stating that “everyone on his cell wears suits, and the suits are actually people with other people inside them” because “[Mayo] wanted to make sure it was noted that he was deteriorating.”).)

Accordingly, Wesley served discovery seeking documents and communications between the defendants and pharmacies about the untimely delivery of medications because such communications are clearly relevant to whether Armor acted with deliberate indifference to Wesley’s and other inmates’ rights to timely receive their prescribed medications. *See* Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim[.]”); *Howard v. Schrubbe*, Case No. 2:15-cv-00557-BHL at 16-19 (E.D. Wis., Feb. 4, 2021) (denying qualified immunity to a prison health services unit manager for “interruptions in prescribed medications” under the higher Eighth Amendment standard.). Armor has refused to produce to any responsive documents or communications to date. In fact, Armor has not even served a response to the document request. *Trafton v. Rocketplane Kistler, Inc.*, No. 08-C-99, at *1 (E.D. Wis. Jan. 14, 2009) (“any objections the Defendants had were waived because their response was not timely filed.”). Wesley seeks an order compelling Armor to immediately produce the requested documents and communications.

Dated at the law office of GINGRAS THOMSEN & WACHS LLP in Milwaukee, Wisconsin, on
this 7th day of April, 2021.

/s/ William F. Sulton

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